PACIFIC TRANSMISSION SUPPLY CO.

IBLA 78-187 Decided June 2, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of terminated oil and gas lease W 15357.

Reversed.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

> It is the responsibility of a lessee to see that any payment tendered for annual rental under an oil and gas lease is so identified that the appropriate State Office can credit the payment to the proper lease account. However, where an appellant demonstrates that the rental money was received timely by the appropriate State Office, and the evidence indicates that the lessee subsequently gave timely and proper instructions as to its application, the lease is properly deemed to have not terminated.

APPEARANCES: Hugh C. Garner, Esq., Calkins, Kramer, Grimshaw & Harring, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Pacific Transmission Supply Company appeals from a decision dated December 22, 1977, of the Wyoming State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease W 15357. The lease was held to have been terminated by operation of law for failure to pay the annual lease rental on or before November 1, 1977, the anniversary date of the lease. 30 U.S.C. § 188(b) (1970); 43 CFR 3108.2-1(a).

On October 14, 1977, BLM received appellant's check in the amount of $860. The amount due for the lease, however, was only

$620, and the identification on appellant's check stub covered lease W 15356 only. BLM's Receipt for Payment for Lease W 15356, dated October 27, 1977, therefore states: "overpayment of $240.00 pending future action, a refund may follow." A refund check for that amount was in fact issued by BLM and sent to appellant.

By letter dated December 2, 1977, appellant requested that terminated lease W-15357 be reinstated. With the letter appellant returned the Bureau's refund check 1/ explaining that this amount was not an overpayment on lease W 15356, but was intended as rental payment for lease W-15357. Appellant further stated:

> I talked to you on the telephone yesterday and was advised that our payment was not properly identified. We have researched this matter further and you are correct our check was mailed without proper identification. However, I telephoned your office on October 13, 1977 advising that we had mailed rental payment checks without proper identification, and on the same day we mailed to your office a letter which explained our error and listed the check numbers, the lease numbers and the rental amount. I wish I could support this with a copy of our letter, but we apparently did not retain a copy.

The decision denying reinstatement states in part:

> We have checked our files for the letter you say was mailed to us on or about October 12, 1977, in which you explained your error. However, we have checked all of the case files for the leases you listed in your letter of December 2, 1977, but we have been unable to locate a copy of this letter.

The decision went on to deny reinstatement on the ground that appellant failed to "identify the proper lease to which the rental should be applied within the 20 days allowed."

Appellant states in its appeal that before BLM made the refund, appellant's contract administrator, a Mr. Stelling, telephoned BLM advising that the check in the amount of $860 was one of several which had been sent to pay annual lease rentals without identification of the leases for which payment was being made. Appellant asserts that on October 13, 1977, Mr. Stelling's secretary "typed

1/ This check (U.S. Treasury Check No. 59,282,161) was returned to appellant for endorsement. Appellant endorsed and again submitted the check to BLM on or about December 12, 1977.

and prepared for mailing" a letter to BLM explaining this situation. The affidavits of Mr. Stelling and his secretary are appended as exhibits to the statement of reasons.

Appellant asserts further that it searched the BLM files on six of its leases but was unable to find a copy of the letter referred to. Appellant did discover, however, that payment for two other leases (W 31569 and W 46651) was properly credited to those leases even though only one check was sent in to cover both rentals, and even though the check stub identified only one of the leases (W 31569) (Appellant's Exhibit E). Appellant's Exhibits F and G are BLM's Receipts for Payment on these leases. Appellant surmises that BLM could have properly identified and credited the rental for these leases only on the basis of the information appellant submitted telephonically and by its letter on or about October 13, 1977.

Appellant contends that there is no issue as to reinstatement since the rental for lease W 15357 was in the appropriate office 2 weeks before the anniversary date, and therefore the lease could not have terminated by operation of law.

[1] It is the responsibility of a lessee to see that any payment tendered for annual rental under an oil and gas lease is so identified that the appropriate State Office of the Bureau of Land Management can credit the payment to the proper lease account.

The basic question to be resolved is whether the lease did terminate November 1, 1977, the anniversary date of the lease.

The issue is whether the lessee informed the State Office of the leases to which the rental payment was to be applied before the termination date of the lease. Appellant says that it did -- first by telephone and then by letter dated October 13, 1977. Unfortunately, the letter cannot be found in the State Office, nor can appellant produce a copy of it.

Nonetheless, the evidence, considered in its entirety, supports appellant's contentions. A check in an amount sufficient to pay the rental on both leases, W-13356 and W-13357, was in the State Office several weeks before the termination date. That office applied part of the face value of the check to W-13356. The only question is whether the State Office was informed to apply the rest of the amount of the check to the rental for W-13357.

Appellant says that it not only mailed in check No. 10325 (intended to cover leases W-13356 and W-13357) without identifying the leases to which it applied, but it also mailed three other checks, each for one lease, and one other, for two leases, without identifying

the leases and without attaching the Notices of Payment Due, which is a form which the State Office sends to each lessee setting out the lease number and date and amount of rental due. On October 13, 1977, appellant had a letter prepared listing check No. 10325 and the others and the leases to which they applied. It is this letter the State Office says it can find no record of. Yet, appellant points out, the other checks were credited to the proper leases. Appellant stresses that check No. 10328, which also covered two leases, was properly credited to both leases. The rental receipts show that check to have been received on October 14, 1977, as was check No. 10325.

Appellant points out that in none of the several steps through which a check is processed by the State Office is a log of incoming mail kept. Thus, it cannot demonstrate that the letter was received; nor can the State Office show that it was not received. Appellant lays great emphasis on the fact that check No. 10328 was properly apportioned between two leases and asks what the basis of that apportionment was, if not its letter of October 13, 1977. That letter, it stresses, also contained instructions for the division of check No. 10325. There is no other explanation for the fact that check No. 10328 was properly apportioned, other than that it was done in accordance with the October 13 letter.

Further, appellant calls attention to the State Office statement that it received check No. 10325 on October 14, 1977, with a copy of the "Notice of Payment Due" for lease W-15356. It then emphasizes that that check and the others had been sent without the "Notice" and that this Notice and the others were, in fact, sent with the letter of October 13, 1977, which identified the leases to which the checks related. The State Office's acknowledgement of the receipt of the "Notice" for lease W-15356 gives strong support to the claim that the October 13 letter was received by the State Office.

If it was received, then lease W-15357 did not terminate and does not need reinstatement. The State Office need only recognize its accounting error, apply the rental to the lease, and continue the term of the lease.

We see no reason not to accept the sworn testimony presented by appellant. This is particularly so where that account is not directly refuted by the State Office and is supported by circumstances occurring in the State Office -- events for which that Office can offer no other rational explanation.

In other circumstances the Board accepts statements of offerors or lessees with even less substantiation. Patricia Marks, 34 IBLA 384 (1978); Louis J. Boland, 30 IBLA 237 (1977) -- offeror's statement that she affixed her signature to the drawing entry card; Elliot &

Leon Davis, 26 IBLA 91 (1977) 2/ -- date of mailing of rental check. Genevieve C. Aabye, 33 IBLA 285 (1978); Edward Malz, 33 IBLA 22 (1977); Mary White, 13 IBLA 363 (1973); R. G. Price, 8 IBLA 290 (1972). See also dissenting opinion in David E. Owen, 31 IBLA 24 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed and the case remanded for appropriate action consistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Martin Ritvo
Administrative Judge

2/ In Davis, where the postmark read June 3, 1976, but the lessee said the letter was posted May 9, 1976, Chief Administrative Judge Frishberg accepted the lessee's contention and held:

"Where the facts of a case lend circumstantial support and credibility to lessees' assertion that they posted their rental payment sufficiently in advance of the time necessary to account for normal postal delays, the lease may be reinstated on the basis that the failure to make timely payment was not due to a lack of reasonable diligence."